IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Appeal No.831-SB of 2002.
Date of Decision: April 04, 2007.

Rajinder Kumar

....**Petitioner**

through
Mr. H.S.Gill, Sr. Advocate with
Mr. R.K.Dhiman, Advocate.

Versus

State of Punjab. .

...**Respondent**
through
Mr. Rajesh Bhardwaj, DAG, Punjab.

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.(ORAL)

This appeal is directed against the judgment and order dated 6th May, 2002 passed by the learned Special Judge, Jalandhar whereby the appellant has been convicted under Section 13(2) read with Section 7 of the Prevention of Corruption Act, 1988 and has been sentenced to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.1000/-, in default thereof to further undergo RI for a period of four months.

[2]. As per the prosecution case, the appellant, while posted as a Clerk in the office of the Labour Inspector, Goraya, demanded and accepted an illegal gratification of Rs.500/- from the complainant- Balwant Singh as a motive or reward for taking action

on the application of the complainant for the recovery of labour charges amounting to Rs.11,500/-. It is alleged that the complainant had done the work of polishing marble and chips flooring in the house of one Prince son of Master Surjit Singh who refused to pay the balance amount of Rs.11,500/- to which the complainant was entitled as labour charges. The complainant allegedly gave an application in the office of the Labour Inspector, Grade I, Goraya for recovery of the aforesaid amount. At that juncture, the appellant is alleged to have demanded gratification for taking action on the said application. It is further alleged that when the appellant kept on pestering him for bribe, the complainant approached the Deputy S.P., Rajwant Kumar of Vigilance Bureau and made a complaint in writing. Five currency notes of Rs.100/- each were produced by the complainant and after arranging Lakhbir Singh as a shadow witness and completing all other requisite formalities to trap the appellant, raid was conducted and the appellant was allegedly nabbed red-handed while accepting the bribe. After the appellant's arrest, the currency notes were taken out from the pocket of his shirt and immediately thereafter the hands of the appellant were dipped into the solution of Sodium Carbonate, which changed its colour from white to pink. The currency notes recovered from the appellant were got tallied with the numbers already kept entered in the memo of the office of the Deputy Superintendent of Police. Thereafter, the other formalities regarding sealing of various articles, preparation of rough site plan, deposit of the case property in the Police Station etc. were also completed.

[3]. On appearance of the appellant in the Court, copies of all the documents sent along with the police report and relied upon by

the prosecution were supplied to him as per the requirements of Section 207 Cr.P.C. and as the record reveals, on consideration of the aforesaid material, charges were framed against the appellant by the learned Special Judge on 6th May, 2002.

[4]. The record further reveals that on 6th May, 2002 itself the charges were read over and explained to the appellant in simple Punjabi, to which he made the following statement:-

> "Statement of accused Rajinder Kumar without oath.
>
> Q. Have you heard and understood the contents of charge?
>
> Ans: Yes.
>
> Q: Do you plead guilty to the charge or claim trial?
>
> Ans: I plead guilty to the charge and do not claim trial".

[5]. In the light of the above reproduced confession, purported to have been made by the appellant, learned Special Judge held him guilty and convicted him for an offence under Section 13(2) read with Section 7 of the Act. However, even before the appellant could be heard on the quantum of sentence, admittedly, the appellant moved an application for cancellation of his confessional statement on the ground that the same was not made by him "voluntarily".

[6]. The said application was dismissed by the learned Special Judge vide a separate order of even date after observing that the appellant had actually confessed with folded hands that he had accepted illegal gratification from the complainant. The Court further observed that the application for withdrawal of the confessional statement was nothing but an attempt to show as if the Court was not

truthful in recording the appellant's confession.

[7]. Thereafter, the appellant was heard on the quantum of sentence. It shall be apposite to reproduce what the appellant pleaded at that stage and which has been taken notice of by the learned Special Judge vide his order dated 6th May, 2002 whereby sentence was awarded to the appellant. The same reads as follows:-

> "I have heard the convict on the quantum of sentence. He stated that he is a poor person and has got minor children. He has neither demanded nor accepted any money as illegal gratification but the complainant was trying to thrust money upon him, which he never accepted. He is the only earning member in the family. His parents are old. Three days back, a male child was born to his wife who is lying admitted in the hospital. He was confused to the questions put to him by the court and he never pleaded guilty nor any recovery was effected from him....."

Learned Special Judge, however, declined to accept the aforesaid plea taken by the appellant on the ground that his application for withdrawal of the confession has since been dismissed by way of a separate order. Consequently, the appellant was sentenced to undergo RI for a period of two years along with a fine of Rs.1000/- as stated above.

[8]. I have heard learned counsel for the parties and perused the original record.

[9]. Before adverting to the issue as to whether the confession made by the appellant was voluntary or not, it would be

appropriate to deal with the order of even date whereby the appellant's application for cancellation of his confessional statement, was dismissed. Unfortunately, learned Special Judge, has erroneously presumed as if by moving the said application, the appellant was seeking the fairness or impartiality of the Court while recording his confession. From the plain reading of the application as well as the plea taken by the appellant, it is apparent that he wanted to wriggle out of the alleged confession not on the ground that he never made the confession or it was wrongly recorded by the Court, but on the ground that he was perplexed due to family circumstances and was not fully aware of the consequences and that he never meant to admit that any gratification was received by him. In other words, the appellant's plea was that the confession was not made by him voluntarily.

[10]. A confession, if not made voluntarily and/or is effectuated by any kind of pressure, though may be truthfully recorded by the Court, would still be liable to be discarded having not been made voluntarily and with a free will. The learned Special Judge ought to have considered as to whether the confession made by the appellant was voluntary or not. As the impugned order rejecting the appellant's application for cancellation of his confession reveals, learned Special Judge did not advert himself to this aspect of the matter. Consequently, the order declining the appellant's application for cancellation of his confession, can not sustain.

[11]. The question that now arises is as to whether the confession made by the appellant can be taken to have been made voluntarily or not. Admittedly, the charges were framed against the appellant on 6th May, 2002. The alleged confession was also made

by him on that very day. Undisputedly, the case for award of sentence was also taken up on that very day. Even before the award of sentence, the appellant moved the application for cancellation of his alleged confession which too was dealt with and disposed of by the learned Special Judge on 6th May, 2002. The manner in which all the events took place in a row does suggest that the appellant was perplexed and was not in a proper state of mind at the time when the alleged confession was made. The record does not reveal that the appellant was apprised of the serious consequences which could follow as a result of the confession made by him. The fact that his wife was hospitalized due to delivery of 2-3 days old child and the appellant had an anxiety to get rid of the pending case in order to look after her, is yet another circumstance which creates suspicion on the free will or the balanced state of mind possessed by the appellant at the time when the alleged confession was made.

[12] Pertinently, the record further reveals that at the time of framing of the charges and/or when the alleged confession was made by the appellant, his counsel was not present and, thus, he had no legal assistance.

[13]. In these circumstances, it is too difficult to solely rely upon the confession made by the appellant to hold him guilty of committing an offence under Section 13(2) read with Section 7 of the Act. Instead the prosecution is obligated to lead its evidence and prove charges against the appellant beyond any reasonable doubt.

[14]. Consequently, this appeal is allowed, the impugned judgment and order dated 6th May, 2002 are set aside and the case is remanded to the court of learned Special Judge at Jalandhar, who shall *de-novo* proceed from the stage of framing of the charges.

Needless to say that the prosecution shall have full opportunity to prove its case against the appellant. As an abundant caution, it is clarified that the appellant shall continue to remain on bail during the pendency of the trial.

[15]. Since the matter is an old one, learned Special Judge shall make an endeavour to conclude the same as early as possible and preferably within six months.

[16]. The parties through their counsel are directed to appear before the learned District & Sessions Judge, Jalandhar, on 2nd May, 2007.

April 04, 2007. **(SURYA KANT)**
dinesh **JUDGE**